

Petitioner's Document #125 2255 Motion is **Ground Five: Fraud Upon the Court.**

The new amended 2255 Motion maintains the issues already presented in the Document #128 brief / memorandum of law and all other pleadings in the 2255 case from the original 2255 Motion, but accounts for the significant factual and procedural developments that have occurred since the original 2255 Motion was filed, including (i) the issue of fraud upon the court being raised in Petitioner's response under Document #150 to "*Government's Response to "Motion and Brief for Leave to File Additional Evidence" and Government's Motion for Pre-Filing Injunction*"; (ii) that the issues in the Brief / Memorandum of law under Document #128 had already raised issues on disproving the Government's/Respondent's elements of the factual basis (Document #19) of guilt constitutes a fraud upon the court on the part of Anand Prakash Ramaswamy; (iii) that the Petitioner's filed Document #137 "*DECLARATION entitled "fifth Additional Evidence Declaration" filed by BRIAN DAVID HILL re [128] Memorandum. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7, # (8) Certificate of Service, # (9) Envelope - Front and Back) (Civil Case number: 17CV1036) (Garland, Leah)*" also had addressed the issues of the Government/Respondent engaging in subornation of perjury and the witness committing perjury which had also raised the issue of a fraud upon the court but had not simply included that exact set of legal words.

Petitioner had already raised issues of the substance of fraud by the adverse party from the beginning of the 2255 case and all of the way to the end, but had first used such terminology of "fraud upon the court" in Document #150 when opposing the Government's motion for pre-filing injunction. Petitioner stating that the Government had knowingly introduced a liar as a witness in the Supervised

Release Violation hearing, stating that the Government's evidence of confession was false as the confession was proven false, and the download dates of the SBI forensic report and other contradictions all may constitute fraud upon the court. Therefore the elements of the ground of "fraud upon the court" had already been established, but just not introduced as a ground, so therefore Petitioner finds it appropriate to ask the Court for permission for amending to his 2255 Motion to include a "Ground Five: Fraud Upon the Court" in support of his 2255 motion. Also Fraud Upon the Court does not have a statute of limitations as it is an inherent power of the Court to vacate a fraudulent begotten judgment and would be considered a VOID JUDGMENT because it doesn't create or impair any rights and cannot be enforceable as a valid judgment, and isn't subject to the consequences of a valid judgment.

Petitioner is entitled to amend or supplement his pending § 2255 motion to include a claim based on "Fraud Upon the Court". Although a petitioner generally must seek leave to amend or supplement his claim from the district court before presenting that claim to the court of appeals, that rule is subject to an exception. See *Guam v. American President Lines*, 28 F.3d 142, 149 (D.C. Cir. 1994) (recognizing that the court's approach to amendments presented for the first time on appeal "need not be inflexible"). Where leave to amend has not first been sought in the district court, "[o]ur approach is not totally inflexible; amendments will sometimes be allowed, but such instances comprise the long-odds exception, not the rule. The touchstone is equitable and case-specific: leave to amend will be granted sparingly and only if '[j]ustice . . . requires further proceedings.'" *Dartmouth Rvw v. Dartmouth College*, 889 F.2d 13, 23 (1st Cir. 1989). This case falls within that exception, and the court therefore should either grant petitioner's

motion to amend, or, in the alternative, remand to the district court for petitioner to seek leave to amend in that court. See *American President Lines*, 28 F.3d at 151.

In *Foman v. Davis*, 371 U.S. 178, 182 (1962), the Court emphasized Rule 15(a)'s mandate that "leave to amend 'shall be freely given when justice so requires.'" The Court concluded that "[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc.—the leave sought should, as the rules require, be 'freely given.'" *Id.* This court has interpreted Rule 15(a) to require that leave to amend be liberally granted. See, e.g., *Harrison v. Rubin*, 174 F.3d 249, 252-253 (D.C. Cir. 1999) (reversing denial of plaintiff's motion for leave to amend because defendant had not made any showing that it would be prejudiced by amendment).

In addition, "courts freely grant pro se litigants leave to amend." *Richardson v. United States*, 193 F.3d 545, 548 (D.C. Cir. 1999) (citing *Moore v. Agency for Int'l Dev.*, 994 F.2d 874, 877 (D.C. Cir. 1993)). Given the absence of any evidence of "bad faith, undue prejudice to the opposing party, repeated failure to cure deficiencies, or futility," petitioner's entitlement to Rule 15 relief is evident. See *id.* The government has not responded to and neither objected to the Petitioner's motion under Document #199 entitled the "*Motion for Sanctions and to Vacate Judgment in Plaintiff's/Respondent's Favor*" "*Motion and Brief/Memorandum of Law in Support of Requesting the Honorable Court in this case Vacate Fraudulent Begotten Judgment or Judgments*", nor could it want to, as the issues of the Government's/Respondent's fraud at issue when Petitioner had filed his § 2255 motion and additional evidence in support of that motion. Similarly, the government cannot argue any undue prejudice from petitioner's amendment.

Petitioner's original pleading challenged his conviction and sentence, and the government therefore was on notice that petitioner was contesting his conviction and sentence. Once Document #137 was filed on Dec 4, 2017 concerning the perjury of the Government's witness Kristy L. Burton, the issue of fraud upon the court was preserved as it was filed before the Government's response to the 2255 Motion which was the Document #141 "MOTION to Dismiss Motion to Vacate, Set Aside, or Correct Sentence by USA as to BRIAN DAVID HILL. Response to Motion due by 2/5/2018 (RAMASWAMY, ANAND)". The issues that Brian's confession was false, and the issues of more frauds by the Government all show that the issue of "Fraud Upon the Court" is preserved in the 2255 Motion and brief and additional evidence. Fraud upon the Court can be brought up at any time during a proceeding or even after the final judgment or a proceeding or proceedings to address the issue of fraud or frauds being directed at the judicial machinery.

With respect to "cause," the legal basis for petitioner's claim of "Fraud upon the Court" was not "reasonably available" to counsel at the time of the trial and change of plea hearing, and frauds would be difficult to prove on direct appeal since it can only make a determination on what was on the record. See *Murray v. Carrier*, 477 U.S. 478, 488 (1986); *Reed v. Ross*, 468 U.S. 1, 16 (1984).

See *Reed v. Ross*, 468 U.S. 1, 16 (1984), 468 U.S. at 14 ("the failure of counsel to raise a constitutional issue reasonably unknown to him is one situation in which the [cause] requirement is met"); *id.* at 17 (when Supreme Court decision with retroactive application "overtur[ns] a longstanding and widespread practice to which this Court has not spoken, but which a near-unanimous body of lower court authority has expressly approved," then "[b]y definition . . . there will almost certainly have been no reasonable basis" for an attorney to have argued the claim

previously); *United States v. Jones*, 2001 WL 127300, *7 (E.D. La. February 9, 2001) (“Jones has shown adequate cause for his failure to raise this precise constitutional issue on appeal because neither Jones [*v. United States*, 526 U.S. 227, 243 n.6 (1999)] nor *Apprendi* had been rendered at the time of his guilty plea trial or his appeal.”).

Finally, petitioner suffered prejudice from the Frauds upon the Court. The first set of frauds upon the court was that Government/Respondent had continued asserting that Brian’s confession was a factual elemental basis of guilt when the confession being attacked and proven false shows that it is a fraudulent conclusion and not a basis of fact. The other issue is involving the contradictions of the SBI forensic report download dates and the fact that the SBI forensic report never verified that each file of interest was ever confirmed as “child pornography” and was of obscene material. Petitioner and his family never saw blurred thumbnails on January 22, 2015 when reviewing over the discovery material. The report has a lack of information confirming that each file of interest was ever what they had claimed Brian David Hill had possessed, and what about the 11 months of download dates when computer was in law enforcement custody. The second set of frauds upon the court wrongfully led to Petitioner’s six (6) months of home detention (house arrest) while under the condition of not being allowed to use the internet that did create an unlawful impediment by the Government which had prevented timely filing of his 2255 Motion. Document #199 is to attempt to correct that first set of fraudulent begotten judgments that were entered against Petitioner. The third set of frauds was addressed in Document #206, regarding the fact that Petitioner was only “naked” and was not being obscene, as is required under Virginia Court of Appeals case law in order for Petitioner to be convicted. Petitioner was not obscene as there is no evidence of masturbation and therefore

cannot be found guilty of Virginia Law, and therefore did not violate Virginia Law. There was no basis for even attempting revocation of Petitioner's Supervised Release as was stated in Document #157. Then the Government's/Respondent's counsel (mainly) Anand Prakash Ramaswamy had further attempted to push this fraud upon the court and pushed for the maximum imprisonment of Petitioner at 9 months in a federal prison. The frauds are causing Petitioner to suffer harsher punishments, and consecutive punishments that increase on any future allegation of a violation of the conditions of supervised release. Each fraud snowballs into a future decision. That fraud had even been injected into the legal order and opinion of the Hon. Judge Jackson L. Kiser in the Freedom of Information Act lawsuit, and may have permanently prejudiced Petitioner beyond repair. See Document #64, Feb 6, 2018, Hill v. Executive Office for United States Attorneys (case no. 4:17-cv-00027), United States District Court for the Western District of Virginia. When frauds are not corrected and are injected into any other opinion or case law in any other federal case or even a state case, it contaminates the entire judicial system and makes it unreliable and causes the judicial system to no longer hold any integrity. It didn't just prejudiced the Petitioner, but had also contaminated and poisoned any facts and truth with lies and those lies are being used to cause more and more harm and punishments, sanctions such as imprisonment, and worse conditions for supervised release to be imposed. These frauds have mentally harmed Petitioner in him almost committing suicide (killing himself) which would also have been irreversible had Petitioner decided to end his life, all because of damage caused by lies and more lies. The frauds upon the court have to be stopped at its source before it causes any more wrongful suffering and further damages, cruel and unusual punishments inflicted against Petitioner. Had the frauds not been perpetuated, Petitioner possibly never would have been indicted, never would have plead guilty, and never would have been forced to plead guilty under oath, and

never would have dealt with ineffective assistance of counsel. Petitioner has established the ground of prejudice.

The prejudice from the fraud upon the court in Petitioner's case is magnified because now Petitioner is facing 9 months imprisonment from the oral order on September 12, 2019, and was ordered in writing in Document #200.

The evidence of fraud upon the court is not subject to any statute of limitations alone as it is the Court's inherit power. "*Chambers v. Nasco, INC, 501 US 32, 115 L. ED 2d 27, 111 S Ct 2123 (1991), Courts §18 "inherent or implied powers", as well as Courts §225.1; Equity §47 "power to vacate fraudulent judgment"*."

It is important that the 2255 Motion have an additional ground to include the inherit issue of "fraud upon the court", as any judgments which have deprived Petitioner of due process and even were grounded in frauds by the opposing counsel are VOID JUDGMENTS. Void Judgments cannot impair or create any new rights, cannot have the consequences as would normally be under a valid judgment. Petitioner clearly has the right to collaterally attack the fraudulent begotten judgments and cannot be time-barred. Thus, petitioner is entitled to relief under the issues of "fraud upon the court", and the court should grant his motion for leave to amend.

CONCLUSION

The special status of habeas actions, the facts that petitioner was proceeding pro se when he filed his § 2255 motion and that the more recently committed frauds by the Government/Respondent were unavailable to him at the time he filed his § 2255 motion, and the strength of petitioner's "fraud upon the court" claim combine to present a "compelling scenario" for invoking the inherit power of the district court to correct the frauds by vacating earlier judgments, and that fraudulent

begotten judgments are not final judgments. Accordingly, the court should grant petitioner's motion for leave to amend and decide the merits of Petitioner's amended section 2255 motion.

Petitioner also requests that the Court set aside the recommendations at least until all issues of "Fraud Upon the Court" that Petitioner had claimed are addressed in this case.

WHEREFORE, Petitioner requests that the Court grant this Motion and allow Petitioner to amend to his 2255 Motion to include a proposed Ground Five: Fraud Upon the Court and allow the Respondent to respond to this fifth ground to answer for their frauds upon the court;

WHEREFORE, Petitioner requests any other relief that the Court deems necessary and proper for the interests of justice that so require;

Attached amendment

Original 2255 Motion which is 12 pages that was filed under Document #125 to demonstrate where the amended information will be added.

Attached 4 pages "AMENDMENT TO Petitioner's original Document #125 §2255 Motion"

Total of 16 pages attached.

Respectfully filed with the Court, this the 30th day of October, 2019.

Respectfully submitted,

Brian D. Hill
Signed

Signed

Brian D. Hill (Pro Se)

310 Forest Street, Apartment 1

Martinsville, Virginia 24112

Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter

I stand with QANON/Donald-Trump – Drain the Swamp

I ask Qanon and Donald John Trump for Assistance (S.O.S.)

Make America Great Again

Petitioner also requests with the Court that a copy of this pleading be served upon the Government as stated in 28 U.S.C. § 1915(d), that “The officers of the court shall issue and serve all process, and preform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases”. Petitioner requests that copies be served with the U.S. Attorney office of Greensboro, NC via CM/ECF Notice of Electronic Filing (“NEF”) email, by facsimile if the Government consents, or upon U.S. Mail.

Thank You!

CERTIFICATE OF SERVICE

Petitioner hereby certifies that on October 30, 2019, service was made by mailing the original of the foregoing:

“PETITIONER’S MOTION FOR LEAVE TO AMEND OR SUPPLEMENT HIS § 2255 MOTION -- MOTION AND BRIEF / MEMORANDUM OF LAW IN SUPPORT OF “PETITIONER’S MOTION FOR LEAVE TO AMEND OR SUPPLEMENT HIS § 2255 MOTION”

by deposit in the United States Post Office, in an envelope (certified mail), Postage prepaid, on October 30, 2019 addressed to the Clerk of the Court in the U.S.

District Court, for the Middle District of North Carolina, 324 West Market Street, Greensboro, NC 27401.

Then pursuant to 28 U.S.C. §1915(d), Petitioner requests that the Clerk of the Court move to electronically file the foregoing using the CMIECF system which will send notification of such filing to the following parties to be served in this action:

<p>Anand Prakash Ramaswamy U.S. Attorney Office Civil Case # 1:17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 Anand.Ramaswamy@usdoj.gov</p>	<p>Angela Hewlett Miller U.S. Attorney Office Civil Case # 1: 17 -cv-1036 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 angela.miller@usdoj.gov</p>
<p>JOHN M. ALSUP U.S. Attorney Office 101 South Edgeworth Street, 4th Floor, Greensboro, NC 27401 john.alsup@usdoj.gov</p>	

This is pursuant to Petitioner's "In forma Pauperis" ("IFP") status, 28 U.S.C. §1915(d) that "The officers of the court shall issue and serve all process, and perform all duties in such cases ... "the Clerk shall serve process via CM/ECF to serve process with all parties.

<p>Date of signing:</p> <p><u>October 30, 2019</u></p>	<p>Respectfully submitted,</p> <p><u>Brian D. Hill</u> <i>Signed</i> Signed Brian D. Hill (Pro Se) 310 Forest Street, Apartment 1 Martinsville, Virginia 24112 Phone #: (276) 790-3505</p> <p>U.S.W.G.O.</p> <p>I stand with QANON/Donald-Trump – Drain the Swamp I ask Qanon and Donald John Trump for Assistance (S.O.S.) Make America Great Again</p>
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I ask Department of Defense (“DOD”) military Constitutional oath keepers,
alliance, Qanon for help in protecting me from corruption and criminal behavior of
Government.

Certified Mail tracking no: 7019-1120-0001-4751-4597

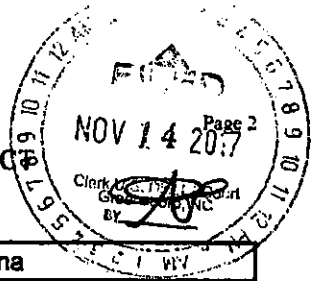
Friend’s justice site: JusticeForUSWGO.wordpress.com

12pg

Original 2255 Motion

Amendment seeking
permission

+ 4pg Ground Five



MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	Middle District of North Carolina
Name (under which you were convicted): Brian David Hill		Docket or Case No.: 1:13-cr-435-1	
Place of Confinement: Supervised Release under the U.S. Probation Office		Prisoner No.: 29947-057 (USM number)	
UNITED STATES OF AMERICA		Movant (include name under which convicted)	
V.		Brian David Hill	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court
for Middle District of North Carolina
324 West Market Street, Suite 1, Greensboro, NC 27401

(b) Criminal docket or case number (if you know): 1:13-cr-435-1

2. (a) Date of the judgment of conviction (if you know): 11/12/2014

(b) Date of sentencing: 11/10/2014

3. Length of sentence: 10 months and 20 days, but not less than time served

4. Nature of crime (all counts):

Count 1: 18:2252A(a)(5)(B) and (b)(2) - Possession of Child Pornography

5. (a) What was your plea? (Check one)

(1) Not guilty

(2) Guilty

(3) Nolo contendere (no contest)

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

I plead guilty to possession of child pornography because from what I understood, the U.S. Attorney claimed that it was on my computer, regardless of whom put it there, so therefore I thought I was technically guilty of possession of child porn. However at a later time I realized that I was wrong to assume that, that I am entitled to prove the affirmative defense of Frame Up which is recognized by the U.S. Supreme Court. I falsely plead guilty because of ineffective Counsel and deteriorating health. See Brief/Memorandum in attachment to this Motion for more information.

6. If you went to trial, what kind of trial did you have? (Check one)

Jury

Judge only

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes

No

8. Did you appeal from the judgment of conviction?

Yes

No

Defendant's Answer to 8.: Almost had a Jury trial

Defendant's Answer to 7.: Not testified on the stand

9. If you did appeal, answer the following:

- (a) Name of court: U.S. Court of Appeals for the Fourth Circuit
- (b) Docket or case number (if you know): 15-4057
- (c) Result: The judgment of the district court is affirmed in part. The appeal is dismissed in part. Doc #19-1
- (d) Date of result (if you know): 4/7/2015
- (e) Citation to the case (if you know): _____
- (f) Grounds raised:
NVA - Untimely filed

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: U.S. District Court for the Middle District of North Carolina
- (2) Docket or case number (if you know): 1:13-cr-435-1
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: Misc. pro se Motions
- (5) Grounds raised: Various issues in the Misc. pro se Motions

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result: Judge Osteen denied every single pro se motion since conviction

(8) Date of result (if you know):

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket of case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes No

(7) Result:

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes No

(2) Second petition: Yes No

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Actual Innocence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant Brian David Hill ("Defendant"), is asserting the claim of actual innocence based on particular elements of what was discovered after conviction.

The Defendant didn't get to review over the rest of all of the discovery material for the criminal case until January 22, 2015 at the office of John Scott Coalter (court appointed lawyer).

(Confession element)The Defendant confirmed after conviction that he made false confession statements which could have been proven by cross referencing/examining the U.S. Attorney's discovery material. Defendant made a confirmed false confession statement regarding child pornography in his Netbook, regarding the child pornography download date for "about a year or so", and his statement of describing PTHC which stands for "Preteen Hardcore" (excerpt cited from Mayodan Police Report) was fabricated over what was already described in Police detective Robert Bridge's search warrant affidavit and in the Police Report, so Defendant describing what PTHC stood for was already described in Detective Bridge's Affidavit. Defendant exhibited a sophisticated form of echolalia which means he repeated what was already described to him by Police. See Brief/Memorandum in attachment to this Motion for more information.

(Forensic element)The Defendant asserts that the entire "SBI Case File" forensic report is questionable on it's own merits. Making a claim that child pornography downloaded using the eMule program between the dates "July 20, 2012, and July 28, 2013." That same Laptop had been seized on August 28, 2012. The child porn download dates corroborate the claims in various threatening emails from tormail.org. More are stated in the Brief attached.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Untimely filed Appeal. The U.S. Court of Appeals would not let me raise any of these issues due to filing too late. Actual Innocence claim doesn't require prior direct appeal, especially on newly discovered evidence.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Various pro se filings on actual innocence. Document #71, Document #73, etc

Name and location of the court where the motion or petition was filed:

U.S. District Court for the Middle District of North Carolina

Docket or case number (if you know): 1:13-cr-435-1

Date of the court's decision: 4/29/2015

Result (attach a copy of the court's opinion or order, if available):

Document #87

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Because there was no statute or federal rule that was used to back any of the post-conviction pro se motions, that was why they were all denied. There was no use appealing motions that hold no legal basis. That is why this 2255 motion is being filed, because it is backed by both case law and statute. I have a legal basis for this motion, good evidence, and good grounds. See Brief/Memorandum in attachment to this Motion for more information.

GROUND TWO: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Brief/Memorandum in attachment to this Motion for more information.

Eric David Placke did many things that were ineffective and would be difficult to explain in this little box.

See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY" "DECLARATION, ATTACHED EXHIBITS, AND BRIEF IN SUPPORT OF THIS MOTION" for all of the evidence and Affidavits/Declarations in support of Defendant's ineffective assistance of Counsel claim needed to prove actual innocence, as the change of plea from guilty to not guilty will require me to prove ineffective Counsel prior to my false guilty plea, and a good reason why I had falsely plead guilty instead of taking it to trial. Evidence I have is that my health was deteriorating while in Jail, my Counsel was going to provide no evidence for the Jury Trial, my Autism would not be brought up, Placke had no defense planned nor prepared. I would have faced prison time if I had no falsely taken the guilty plea. Now that I am out of jail, I can fight to prove my innocence without Placke.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Untimely filed Appeal. The U.S. Court of Appeals would not let me raise any of these issues due to filing too late.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed:

 Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

 Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND THREE: Deprivation of due process rights as guaranteed by Fourteenth Amendment. Deprivation of discovery rights

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Was not given full access to criminal case discovery materials until January 22, 2015, at John Scott Coalter's office, a few months after I was convicted upon final Judgment. That was why I was furious and filed a bunch of pro se motions with evidence, even though none of those had any statutory basis. I was angry that I was swindled by my own lawyers. They wouldn't let me prove my innocence in any way. All Placke wanted me to do was to say falsely under Oath that I was guilty, and Coalter to stick with my false guilty plea.

See Brief/Memorandum in attachment to this Motion for more information.

See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY"" "DECLARATION, ATTACHED EXHIBITS, AND BRIEF IN SUPPORT OF THIS MOTION"

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Untimely filed Appeal. The U.S. Court of Appeals would not let me raise any of these issues due to filing too late.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: Prosecutorial misconduct - Based upon new evidence that has surfaced in a 2017 Freedom of Information Act ("FOIA") lawsuit and FOIA Appeal case, in the Western Dist. of Virginia.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The U.S. Attorney has covered up two pieces of evidence that is needed to help prove factual innocence for this 2255 motion. Because of this I ask that the Court enforce the discovery of the criminal case evidence that was originally received by Eric David Placke but he refused to let me prove my innocence in any way with the discovery evidence material. John Scott Coalter has threatetened that he may destroy the evidence of discovery which further forces me to be stuck with my false guilty plea. Eric avid Placke only wanted to work with the U.S. Attorney and get the best guilty plea bargain he could. He was no interested in suppressing any evidence, and not inteested in my innocence. Because of not getting access to all of my discovery material, I had to sue the Executive Office for United States Attorneys and U.S. Department of Justice citing the deprivation of my rights under Brady v. Maryland and Giglio v. United States.

See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY""
"DECLARATION, ATTACHED EXHIBITS, AND BRIEF IN SUPPORT OF THIS MOTION"

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

Newly discovered evidence filed in Federal civil case "Brian David Hill v. Executive Office for United States Attorneys (EOUSA) et al," case no. 4:17-cv-00027, U.S. Dist. Court for Western District of Virginia.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes No

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes No

(4) Did you appeal from the denial of your motion, petition, or application?

Yes No

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes No

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

U.S. Attorney refusing to give me access to my entire criminal case discovery material even though requested via Freedom of Information Act.

Federal civil case "Brian David Hill v. Executive Office for United States Attorneys (EOUSA) et al," case no. 4:17-cv-00027, U.S. Dist. Court for Western District of Virginia.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:
- (a) At the preliminary hearing:
Eric David Placke
- (b) At the arraignment and plea:
Eric David Placke
- (c) At the trial:
Eric David Placke (no trial had to proceed because of the change of plea to guilty)
- (d) At sentencing:
John Scott Coalter
- (e) On appeal:
Mark Jones
- (f) In any post-conviction proceeding:
No proceeding yet
- (g) On appeal from any ruling against you in a post-conviction proceeding:
16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes No
17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No
- (a) If so, give name and location of court that imposed the other sentence you will serve in the future:
- (b) Give the date the other sentence was imposed:
- (c) Give the length of the other sentence:
- (d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes No
18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Because actual innocence and my Constitutional rights should not be barred by statute. Even John Scott Coalter ("Mr. Coalter") admitted on September 30, 2016, that if I decide to file a 2255 and assert actual innocence, that I would have to appear before a "change of plea" hearing and I would have to raise ineffective assistance of Counsel as a reason why I had (falsely) taken the plea of guilty. Since ineffective Counsel can arubly be raised, then why not all Constitutional grounds since I have been deprived of all Constitutional rights that an Article III Court is supposed to guarantee all criminal Defendants accused of serious crimes.

Also new evidence has been discovered since then. I had filed a Freedom of Information Act ("FOIA") request with the Executive Office for U.S. Attorneys ("EOUSA") concerning my criminal case discovery evidence since Mr. Coalter refused to give me my discovery, has threatened to possibly destroy the evidence, and Mr. Coalter has admitted to being in conflict of interest of me wanting to prove my actual innocence so he is working against me.

In a June 29, 2017, letter mailed to me from the Office of Government Information Services ("OGIS"), the Mediation staffer admitted to receiving a claim from the EOUSA that the U.S. Attorney office of Greensboro, NC do not have the confession audio and SBI case file, even though they were made aware on June 30, 2015 during the Supervised Release Revocation ("SRV") hearing that I fully intend on overturning my criminal conviction and prove my actual innocence via a 2255 Motion. The U.S. Attorney has removed evidence from their office to evade my FOIA request and prevent me from getting access to my criminal case discovery evidence to be able to mount a factual claim of actual innocence. The original evidence that they had used against me to led me to being wrongfully convicted, they have removed a portion of the evidence records that was used to indict and convict me. Because of that I had filed a lawsuit in the U.S. District Court, for the Western District of Virginia, case # 4:17-cv-27. The case is currently being reviewed and heard in the Danville Division in Danville, VA. The evidence presented in my Complaint that has been presented had enough of a merit to cause the U.S. Attorney office of Greensboro, NC (Middle District of North Carolina) to file answers to my complaint. They filed answers denying all allegations, even denying knowledge of my health condition (aka Autism and Type 1 Brittle Diabetes) which in my criminal case that had fully had knowledge of my health condition in both Transcripts and the U.S. Attorney admitted to receiving and reviewing the psychological report by Dr. Dawn Graney at the June 3, 2014, Pretrial Status Conferenece. The U.S. Attorney has made denial of knowledge to things that they are very well knowledgable on. The U.S. Attorney of Greensboro, NC, to my knowledge has perpetuated a fraud among the Court with answers that I and witnesses (Kenneth Forinash, Stella Forinash, Roberta Hill) know for a fact of matter are not the truth. The U.S. Attorney office of Greensboro, NC, collectively in the FOIA lawsuit in 2017, have lied about the evidence that they had originally used to indict and eventually convict me by plea agreement. I feel that the U.S. Attorney knew of any facts of possible factual innocence but they have either ignored it, lied about it, or got rid of any evidence records, papers, or things that can help to prove any facts of my actual innocence.

If the U.S. Attorney perpetuated a fraud among the Court, then I have a right to investigate if that is indeed the case, and as to why. The Court has a right to investigate if that is indeed the case, and as to why. If there is clear and convincing evidence that the U.S. Government may have perpetuated a fraudulent criminal case against a innocent man, then the Court needs to investigate with a full eventiary hearing and ask both sides what evidence they have. Under Marbery v. Madison, any law that is repugnant to the Constitution is null and void. My Constitutional rights should not be further deprived by the one year limitation. Actual Innocence is also a factor in Constitutional rights being deprived. Even though I am not in a federal prison, I am still remanded to the custody of the U.S. Marshal, to serve my sentence under Supervised Release and sex offender restrictions. I am not free to come and go as I please.

See Brief/Memorandum in attachment to this Motion for more information. See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY""
 "DECLARATION, ATTACHED EXHIBITS, AND BRIEF IN SUPPORT OF THIS MOTION"

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate and overturn the criminal conviction and Judgment on November 12, 2014. Vacate the entire sentence. Grant the Defendant a "certificate of innocence" allowing the Defendant the right to expunge records. State facts of innocence. or any other relief to which movant may be entitled.

Brian D. Hill (Pro Se)
Signed

Signature of Attorney (if any)

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I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on November 14~~0~~, 2017 (month, date, year)

U.S. Postal Service
OR FedEx

Executed (signed) on November 14~~0~~, 2017 (date)
11

Brian D. Hill
Signed

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Certified Mail tracking #: 7017-1450-0000-9407-6759

Brian D. Hill (Pro Se)

310 Forest St, Apartment 2

Martinsville, VA 24112

2nd certified mail tracking #: 7017-1450-0000-9407-6766

AMENDMENT TO Petitioner's original Document #125 §2255 Motion

Dated October 30, 2019

Case no. 1:13-cr-435-1, Civil Case no. 1:17-cv-1036

GROUND FIVE: Fraud Upon the Court

(a) Supporting facts:

One or more attorneys for the U.S. Attorney Office of Greensboro, NC, counsel for the United States of America had engaged in a fraud upon the Court that had gone as far as introducing (1) a false confession as a genuine confession of guilt (Document #19) by Petitioner Brian David Hill and then used that as a coercive means to mislead mentally and neurologically impaired (Autism, OCD, Type 1 brittle diabetes) criminal defendant Brian David Hill into falsely pleading guilty under oath (a perjury trap set up by the fraudsters). The fraud upon the court that the N.C. SBI forensic report did not confirm whether each file was actually of obscene material and was child pornography as defined by federal and state statutes. Even the Presentence Investigation Report (Dkt. 33) stated under paragraph 13 that *“According to the government, none of the children have been identified as part of a known series by the National Center for Missing and Exploited Children (NCMEC)”*. The Government didn't admit this until after Brian David Hill falsely pleads guilty which is a sick joke. The argument is that anything pornographic shared on a public file-sharing network and is monitored by law enforcement is known pornographic material of a known series. For the Government to admit that none of the alleged files are of a known series which contradicts Detective Robert Bridge.

The SBI forensic report had even stated the following:

“SBI CASE NUMBER: 2012-02146 (915)”

“eMule Known.net: The Known.net saves all files eMule knows of whether they are shared files, files currently in the download list, or downloaded in the past. For every file, information like file size, file name, hash sets, hash values, and some statistics are saved. From the analysis, this record showed that 454 files had been downloaded with the eMule program

between July 20, 2012, and July 28, 2013. This record also showed that files were shared with other users and the number of times each file was shared.”

(Some paragraph or text omitted)

“ITEM #2: ASUS Eee PC Laptop”

“Serial Number: 9COAAS155554”

“The following hard drive was removed from Item #2:”

“Seagate HD 250GB”

“Serial Number: 6VCIL6G5”

“No images of interest were noted.”

“No videos of interest were noted.”

“IV”

That same netbook, Brian falsely confessed to child porn being in that netbook, the very netbook that they didn't get on their search of August 28, 2012. Proves one false confession statement directly when cross examined/referenced. There are more confession statements that cannot be sustained as a truthful and genuine confession. The download dates match Brian's confession statement of “about a year or so” but 11 months of that download date time-frame was when the computer was in law enforcement custody (Town of Mayodan Police Department, North Carolina State Bureau of Investigation (N.C. SBI)). That invalidates Brian's next confession statement as false. Brian gave a false confession and the U.S. Attorney Office purported false element or elements of guilt against Brian David Hill as a coercive means to persuade Brian David Hill and lawyer Eric David Placke to get Brian to falsely plead guilty under oath on June 10, 2014, Dkt. 20.

The U.S. Attorney Office had engaged in a fraud upon the court again on June 30, 2015, at the Supervised Release Violation hearing. Petitioner Brian David Hill had filed a Document #199, “*MOTION entitled "Motion for Sanctions and to Vacate Judgment in Plaintiff's/Respondent's Favor" "Motion and Brief/Memorandum of Law in Support of Requesting the Honorable Court in this case Vacate Fraudulent Begotten Judgment or Judgments" filed by BRIAN DAVID HILL. Response to Motion due by 10/25/2019.*” No responses have been made by October 25, 2019 which landed on a Friday. Even if the Court were to consider the U.S. Attorney's response timely filed in the event that they had filed their response on a Monday which would be October 28, 2019, they did not file a response on that date either. When the Respondent aka the U.S. Attorney Office files no response to allegations against them in regards to a “fraud upon the court”, then they do not object to such allegations against them. Fraud upon the court demonstrates that invalid judgment or invalid judgments were entered

against Petitioner and gave Petitioner a clear cut miscarriage of justice in the judgment(s) against Petitioner. Fraud upon the court is not subject to any statute of limitations of a time-bar. Evidence that is proven of any fraud upon the court can also support Petitioner's "*GROUND ONE: Actual Innocence*" if such frauds were of any evidence and/or facts concerning the alleged guilt of Brian David Hill.

Petitioner may have other frauds that cannot be explained in this amendment, but Petitioner reserves the right to file a third and final Motion for default judgment as sanctions for being a victim of repeated pattern of fraud upon the court against Petitioner, which compromises the Court to rule partially against Petitioner in favor of the Government.

(b) Direct Appeal of Ground Five:

(1) If you appealed from the judgment of conviction, did you raise this issue?
Yes ___ No **X**

(2) If you did not raise this issue in your direct appeal, explain why:

Fraud upon the court is almost impossible to appeal since the issues of fraud are usually derived from extrinsic and/or intrinsic evidence depending on circumstances. Appeals only review what was on the record prior to a judgment. Frauds that are discovered usually are not subject to appeal because frauds are normally not detectable on the record. Any judicial decisions made afterwards in regards to a discovered fraud upon the court can be appealed.

A Party Affected by VOID Judicial Action including frauds upon the court Need Not APPEAL. State ex rel. Latty, 907 S.W.2d at 486. It is entitled to no respect whatsoever because it does not affect, impair, or create legal rights." Ex parte Spaulding, 687 S.W.2d at 745 (Teague, J.,concurring). A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court. See Long v. Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999).

(c) Post-Conviction Proceedings:

This issue is being amended to the first 2255 Motion case under Document #125. Original 2255 Motion filed on November 14, 2017. This amendment is being added

on October 30, 2019.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 30, 2019.

Respectfully submitted,

Brian D. Hill
Signed

Signed

Brian D. Hill (Pro Se)

310 Forest Street, Apartment 1

Martinsville, Virginia 24112

Phone #: (276) 790-3505

U.S.W.G.O.

Former U.S.W.G.O. Alternative News reporter

I stand with QANON/Donald-Trump – Drain the Swamp

I ask Qanon and Donald John Trump for Assistance (S.O.S.)

Make America Great Again